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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KARL J. DAVIS,

Petitioner,

v.

JOHN GAY, *et al.*,

Respondents.

Case No. C08-5333 RBL/KLS

ORDER DENYING MOTION FOR  
THE APPOINTMENT OF COUNSEL

This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner has filed a motion for the appointment of counsel in this habeas proceeding. Dkt. # 20. Having reviewed Petitioner's motion, the Court finds, for the reasons set forth below, that it should be denied.

There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts. An

1 evidentiary hearing has not been granted in this case and the claims in the petition are adequately set  
2 forth and articulated. Petitioner has not demonstrated that an evidentiary hearing is necessary or that  
3 he is entitled to one. It is apparent that the issue presently before the Court – whether the petition is  
4 clearly time-barred – may be resolved solely by reference to the state court record. *See, e.g., Campbell*  
5 *v. Wood*, 18 F.2d 662, 679 (9<sup>th</sup> Cir.) (en banc), (*cert, denied*, 114 S. Ct. 2125 (1994)).

6 Accordingly, Petitioner's motion for the appointment of counsel (Dkt. # 20) is **DENIED**.

7 The Clerk is directed to send copies of this order to Petitioner and counsel for Respondent.

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9 DATED this 29th day of October, 2008.

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13 Karen L. Strombom  
14 United States Magistrate Judge  
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